STATE OF MICHIGAN

COURT OF APPEALS

KELLY BRINGMAN,

Plaintiff/Counterdefendant-Appellant,

v

RAYMOND T. CATO, JR., d/b/a/CATO COMPANIES,

Defendant/Counterplaintiff-Appellee,

and

THE CROSSINGS II, LIMITED DIVIDEND HOUSING ASSOCIATION, LIMITED PARTNERSHIP, and CATO MANAGEMENT, LTD.,

Defendants-Appellees.

UNPUBLISHED
July 26, 2002

No. 230102
Kalamazoo Circuit Court
LC No. 99-000421-CZ

Before: Neff, P.J., and White and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendants summary disposition in this employment discrimination case brought under the Civil Rights Act (CRA), MCL 37.2101 *et seq.* We affirm.

We review the circuit's court grant of summary disposition under MCR 2.116(C)(10) de novo. *Smith v Globe Life Ins Co,* 460 Mich 446, 454; 597 NW2d 28 (1999). The moving party must support its position by documentary evidence; the burden then shifts to the non-moving party to establish that a genuine issue of disputed fact exists. *Id.* A plaintiff may establish a prima facie case of employment discrimination by showing (1) that she was a member of a protected class, (2) that an adverse employment action was taken against her, (3) that she was qualified for the position, and (4) that she was replaced by one who was not a member of the protected class. *Feick v Monroe Co*, 229 Mich App 335, 338; 582 NW2d 207 (1998). Once a plaintiff makes out a prima facie case, the burden of production shifts to the defendant to articulate some legitimate, nondiscriminatory reason for its adverse employment action. *Meagher v Wayne State University*, 222 Mich App 700, 710-711; 565 NW2d 401 (1997). Once

the employer articulates such a reason, the plaintiff must show that the defendant's proffered reason(s) were merely pretextual. *Town v Michigan Bell Telephone Co*, 455 Mich 688, 695; 568 NW2d 64 (1997). Pretext may be proved (1) by showing that the reason(s) had no basis in fact, (2) if the reason(s) had a basis in fact, by showing that they were not actual factors motivating the decision, or (3) if the reason(s) were motivating factors, by showing that they were jointly insufficient to justify the decision. *Meagher, supra* at 712, citing *Dubey v Stroh Brewery Co*, 185 Mich App 561, 565-566; 462 NW2d 758 (1990). The soundness of an employer's business judgment may not be questioned as a means of showing pretext. *Meagher, supra.*

Assuming that plaintiff established a prima facie case, summary disposition was proper because plaintiff produced insufficient evidence to allow a reasonable juror to conclude that defendants' explanation for terminating her was pretextual. Defendants' explanation for terminating plaintiff was, generally, that she was not performing her job satisfactorily. Plaintiff conceded that she was evaluated as needing improvement in several areas, and rated roughly a "2.5" on a scale of 1 to 5. Plaintiff admitted that her supervisor directed her to implement changes in hopes of improving her performance, such as using a tickler filing system, but that she failed to do so. Plaintiff acknowledged that one of the reasons she was hired was to increase occupancy at the complexes she managed, and acknowledged that there was no significant increase in occupancy. Most important, however, was plaintiff's failure to adequately train her newly-hired assistant to fill in for her while she was on maternity leave. Plaintiff's deposition testimony reveals that she understood that she was responsible for training the assistant; however, her argument on appeal is that she was not responsible for training the assistant because, considering the short duration of her maternity leave, there would be no need to do so. Plaintiff's supervisor testified that the assistant was not adequately trained to work independently at the job. Considering plaintiff's evaluation and her failure to fulfill her responsibilities, plaintiff has failed to establish pretext.

According to plaintiff, her supervisor, Ken Bradner, told her several times not to blame her performance problems on her baby. Plaintiff acknowledged that, when Bradner would comment that things were not getting done, or that apartments were not being rented, she would sarcastically comment that "Oh, gee, I didn't get to that. It must be the baby's fault." We reject plaintiff's argument that Bradner's comments constitute direct evidence of discrimination. These isolated comments do not, if believed, require a conclusion that unlawful discrimination was at least a motivating factor in defendants' decision to terminate plaintiff. *Lamoria v Health Care & Retirement Corp*, 230 Mich App 801, 806; 584 NW2d 589 (1998), aff'd in part, rev'd in part on other grounds 233 Mich App 560; 593 NW2d 699 (1999).

Summary disposition was properly granted.[1] Affirmed.

/s/ Janet T. Neff
/s/ Helene N. White
/s/ Donald S. Owens

[1] Defendants' appellate brief includes discussion of their counter claim, however, plaintiff did not appeal the circuit court's disposition of that claim and it is thus not before us.